

1  
2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 WILLIE WEAVER,

NO. C 04-4784 JW PR

12 Plaintiff(s),

**ORDER DENYING FED.R.APP.P. 4(a)(4)  
MOTION**

13 v.

14 PELICAN BAY STATE PRISON,

docket no. 12

15 Defendant(s).  
16 \_\_\_\_\_/

17 Plaintiff, an inmate at Pelican Bay State Prison and frequent litigant in this Court, filed a pro  
18 se civil rights complaint under 42 U.S.C. § 1983, alleging that he has been unable to obtain a “119  
19 log” of his legal mail. On May 9, 2005, the Court dismissed the complaint for failure to state a claim  
and entered judgment.

20 Between May 31, 2005 and November of 2005, Plaintiff filed an “objection” (docket no. 12,  
21 filed May 31, 2005), numerous motions, and eventually a notice of appeal. While the case was on  
22 appeal, Plaintiff continued to file a few more motions in this Court. On May 22, 2006, the Court  
23 issued an order denying motions docketed as numbers 13, 14, 15, 17, and 19; the order, however, did  
24 not address the “objection” filed May 31, 2005.

25 On June 19, 2006, the Ninth Circuit issued an order holding the appeal in abeyance pending  
26 this Court’s resolution of what it characterized as a Federal Rule of Appellate Procedure 4(a)(4)

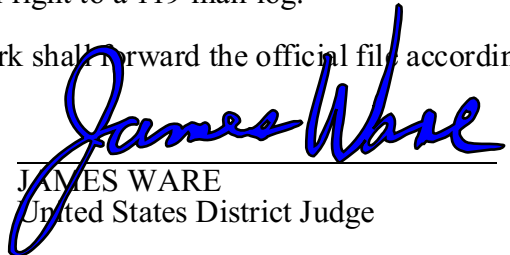
27 Order Denying Fed.R.App.P. 4(a)(4) Motion  
28 N:\JW Cases\04\04-4784jw.ord.4a4.wpd

1 motion, pending as of May 31, 2006. This Court presumes that the motion referred to by the Ninth  
2 Circuit is the "objection" filed May 31, 2005, because there is no pending motion filed May 31,  
3 2006.

4 Having reviewed the "objection" filed May 31, 2005, and construing it as a Rule 4(a)(4)  
5 motion in accordance with the Ninth Circuit, this Court DENIES the motion. As the Court  
6 previously held, Plaintiff does not have a constitutional right to a 119 mail log.

7 The case may now proceed on appeal. The Clerk shall forward the official file accordingly.

8  
9 Dated: August 11, 2006

  
JAMES WARE  
United States District Judge

United States District Court

For the Northern District of California

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27 Order Denying Fed.R.App.P. 4(a)(4) Motion  
28 N:\JW Cases\04\04-4784jw.ord.4a4.wpd

1 THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

2  
3 Willie Weaver  
4 J-91389 4-B-C-8-201  
5 California Correctional Institution-Tehachapi  
6 P. O. Box 1906  
7 Tehachapi, Ca 93581

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Dated: August 11, 2006

Richard W. Wieking, Clerk

By:   
Courtroom Deputy

Order Denying Fed.R.App.P. 4(a)(4) Motion  
N:\JW Cases\04\04-4784\jw.ord.4a4.wpd